

EXHIBIT J

EXHIBIT J

From: Richard Donahoo
Sent: Friday, March 25, 2011 5:09 PM
To: 'Kloosterman, John C.'; Justin Karczag
Cc: Hayward, Laura E.; Tom Foley; William Donahoo; Stephanie Hanning; Christine James; Colleen Connors; Sarah Kokonas
Subject: RE: Beauperthuy v 24 Hour Arbitrations
Attachments: DeclarationreArbitrationProvision.pdf

John,

We have filed opt-in demands/claims for arbitration at JAMS in Northern California as it is an appropriate venue to arbitrate the claims. It is the proper venue for the same reason the Beauperthuy case is venued in Northern California. It is the venue of 24 Hour's headquarters where the underlying dispute arose. Moreover, the dispute centered on 24 Hour's exempt classification, its failure to pay overtime and the failure to pay personal trainers their actual time worked. All of this emanated from its corporate headquarters. Most of the witnesses you proffered in support of your recently successful motion were from California. Your office is in Northern California. Your PMK's are in California. That 24 Hour may want to defend the case by claiming that certain managers' actual work performed qualified them for the exempt status does not change the nature of the dispute. Moreover, the witnesses can testify as to work performed just as well in California as anywhere else. It just makes no sense to do arbitrations all over the country.

24 Hour previously submitted a declaration with the arbitration agreement to the court in the Boyce case, which we filed in the Beauperthuy case early on (possibly before your involvement in the case). Attached is a copy. According to the 24 Hour declarant, Mr. Prescott, this is the controlling agreement. Your email makes references to provisions that are not in that agreement. Please advise if you are referring to a different arbitration agreement. If so, please provide the arbitration agreement(s) that 24 Hour contends applies to each of the opt-in plaintiffs. We don't agree that any other agreement applies, but without knowing what agreement you are referring to, we can't make any progress on coming to a resolution on this issue.

When you are available we would like to have a meaningful sit-down to try to formulate a procedural framework for getting these claims adjudicated in an efficient manner to complete this litigation. We are interested in moving forward. Let me know when you are available to meet and confer once you speak with your client.

Rich.

From: Kloosterman, John C. [mailto:JKloosterman@littler.com]
Sent: Wednesday, March 23, 2011 5:00 PM
To: Justin Karczag
Cc: Hayward, Laura E.; Tom Foley; Richard Donahoo; William Donahoo; Stephanie Hanning; Christine James; Colleen Connors; Sarah Kokonas
Subject: RE: Beauperthuy v 24 Hour Arbitrations

Justin,

I've received the 8 arbitration demands encompassing 400 individuals that you've filed with JAMS in San Francisco over the past few days. We are pleased that the *Beauperthuy* opt-ins have elected to proceed with individual arbitration under the terms of each individual's arbitration agreement with 24 Hour Fitness. We are confused, however, as to why you are filing the claims with JAMS and in San Francisco.

The relevant arbitration agreements provide that a party's arbitration demand should be delivered directly to 24 Hour Fitness' legal department; I'll accept service of these, and any remaining timely demands, on the company's behalf. The agreements also provide that the arbitrator will be selected by mutual agreement of the parties and from a listing of arbitrators and retired judges in the geographical vicinity of the place where the dispute arose or where the employee last worked for 24 Hour Fitness. Since the claims at issue here all relate to employment outside of California, San Francisco is not the contractually proper forum. In short, the agreements at issue don't provide that JAMS will administer the arbitrations, or that JAMS' Rules apply, or that the arbitrations will occur in San Francisco.

We may agree to use a JAMS arbitrator for some individual claimants if their claim arose in geographic proximity to a JAMS facility and the parties agree on a JAMS panelist, but we don't agree to use JAMS for all the arbitrations. So there's no need to continue filing the demands for arbitration with JAMS - you can just send them to me through the deadline stated in Judge Conti's Order.

Thanks,

John

From: Justin Karczag [mailto:jkarczag@foleybezek.com]

Sent: Wednesday, March 23, 2011 4:44 PM

To: Kloosterman, John C.

Cc: Hayward, Laura E.; Tom Foley; Richard Donahoo; William Donahoo; Stephanie Hanning; Christine James; Colleen Connors; Sarah Kokonas

Subject: Re: Beauperthuy v 24 Hour Arbitrations

John, attached is our Demand and Claim for Individual Arbitration No. 8 submitted to JAMS' San Francisco office.

-- Justin

Justin P. Karczag

Partner

Foley Bezek Behle & Curtis, LLP

575 Anton Blvd., Ste. 710, Costa Mesa, CA 92626

Main: 714.556.1700, Direct: 714.200.2997, Fax: 714.546.5005

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To reply to our email administrator directly, send an email to postmaster@littler.com

Littler Mendelson, P.C.
<http://www.littler.com>

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 2 LITTLER MENDELSON
 3 A Professional Corporation
 4 2175 North California Blvd., Suite 835
 5 Walnut Creek, CA 94596-3565
 6 Telephone: (925) 932-2468
 7 Fax No.: (925) 946-9809

8 VAN A. GOODWIN, Bar No. 095170
 9 DENISE M. VISCONTI, Bar No. 214168
 10 LITTLER MENDELSON
 11 A Professional Corporation
 12 701 "B" Street, 13th Floor
 13 San Diego, CA 92101-8194
 14 Telephone: (619) 232-0441
 15 Facsimile: (619) 232-4302

16 Attorneys for Defendants
 17 SPORTS AND FITNESS CLUBS OF AMERICA
 18 d/b/a 24 HOUR FITNESS

19 UNITED STATES DISTRICT COURT
 20 SOUTHERN DISTRICT OF CALIFORNIA

21 ROBERT L. BOYCE, JR.; STEPHANIE
 22 SHETLER; individuals for themselves; on
 23 behalf of all others similarly situated and
 24 on behalf of the general public,

25 Plaintiffs,

26 v.

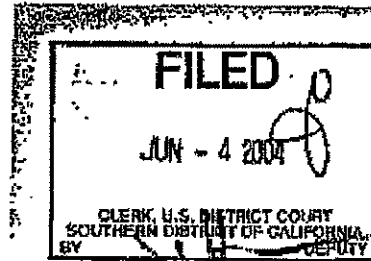
27 SPORTS AND FITNESS CLUBS OF
 28 AMERICA, a California corporation d/b/a
 29 24 HOUR FITNESS; and DOES 1 through
 30 10, inclusive,

31 Defendants.

Case No. 03cv2140-JEG(BLM)

DECLARATION OF WILLIAM D.
 PRESCOTT IN SUPPORT OF
 DEFENDANT'S MOTION FOR ORDER
 AMENDING PLEADING TO EXCLUDE
 REFERENCE TO REPRESENTATION
 OF UNNAMED CLASS MEMBERS WHO
 ARE PARTIES TO ARBITRATION
 AGREEMENTS

Hearing Date: July 26, 2004
 Time: 10:30 a.m.
 Courtroom 13



ORIGINAL

LITTLER MENDELSON
 A PROFESSIONAL CORPORATION
 2175 NORTH CALIFORNIA BLVD., SUITE 835
 WALNUT CREEK, CA 94596-3565
 TEL: (925) 932-2468
 FAX: (925) 946-9809

DECLARATION OF WM. PRESCOTT ISO 24 HOUR FITNESS' MOTION FOR ORDER AMENDING PLEADING

RECEIVED IN
 DOCKETING
 JUN 08 2004

EXHIBIT 2

21

24

1 I, WILLIAM D. PRESCOTT, declare as follows:

2 1. I am employed by Defendants 24 Hour Fitness USA, Inc. and Sports &
3 Fitness Clubs of America, Inc. (collectively referred to as "24 Hour Fitness" or the "Company") as
4 the Senior Director of Corporate and Field Human Resources. I make this declaration on behalf of
5 24 Hour Fitness and, based upon the information available to me and to the Company, I am informed
6 and believe and on that ground allege that the matters stated herein are true.

7 2. 24 Hour Fitness has maintained an Arbitration of Disputes Policy for all times
8 relevant to this lawsuit. In December of 2001, 24 Hour Fitness adopted a revised version of its
9 Arbitration of Disputes Policy. This policy was to be included in the 24 Hour Fitness Employee
10 Handbook, as previous versions of the policy had been. The revised policy provides:

11 If any dispute arises from or relates to your employment with 24 Hour Fitness or the
12 termination of your employment, you and 24 Hour Fitness agree that you both will
13 submit it exclusively to final arbitration. Except for workers' compensation and
14 unemployment insurance claims, the dispute includes every kind or type of dispute
15 including, without limitation, any allegation of wrongful discharge, discrimination,
16 harassment, unfair competition, or any injury to a party's physical, mental or
17 economic interest. Unless controlling legal authority requires otherwise, there shall
18 be no right or authority for any dispute to be heard or arbitrated on a class action
19 basis, as a private attorney general, or on a basis involving disputes brought in a
20 purported representative capacity on behalf of the general public, provided, however,
21 that any individual claim is subject to this agreement to arbitrate. This means that a
22 neutral arbitrator, rather than a court or jury, will decide the dispute.

23 In addition, the Policy states that the parties agree to "settle the dispute according to the provisions
24 of the Federal Arbitration Act, 9 U.S.C. sections 1-16." A true and correct copy of the December
25 2001 24 Hour Fitness Arbitration of Disputes Policy is attached hereto as Exhibit "A".

26 3. Pursuant to the terms of this Policy, 24 Hour Fitness agrees to "pay the fee for
27 the arbitration proceeding." In addition, the Policy provides for resolution by a neutral arbitrator,
28 and is fully mutual, requiring both employees and 24 Hour Fitness to submit their employment-
related disputes to arbitration.

4. To promulgate this new policy, in or about December 2001 the Company sent
a memorandum, with a copy of the Policy attached, to all employees. This was sent via first class
mail, postage prepaid, to the current residence addresses for employees on file with the Company.
In addition, for those employees for which the Company did not have current residence addresses,

1.

LITTON HENDRICKSON
A PROFESSIONAL CORPORATION
1100 West Washington Street
Suite 101
West Valley, UT 84093-1001
Tel: 801.333.1100
Fax: 801.333.1101

DECLARATION OF WM. PRESCOTT ISO 24 HOUR FITNESS' MOTION FOR ORDER AMENDING PLEADING

25

1 and/or where the Company received returned mail indicating that an address was incorrect, the
 2 company made diligent efforts to follow up to ensure that all employees received a copy of the
 3 updated Arbitration Policy. A true and correct copy of this memorandum, dated December 14, 2001,
 4 is attached hereto as Exhibit "B".

5 5. On January 23, 2002, 24 Hour Fitness directed that a follow-up memorandum
 6 be inserted with employees' paychecks or pay stubs which informed employees of the new Policy.
 7 In addition, the memorandum directed them to speak with the Operations Manager of their club to
 8 obtain a copy of the revised Arbitration Policy if they had not received it by mail. A true and correct
 9 copy of this memorandum, dated January 23, 2002, is attached hereto as Exhibit "C".

10 6. Subsequent to the mass mailing of the new Policy, and the follow-up
 11 memorandum inserted with employee paychecks and pay stubs, 24 Hour Fitness has included the
 12 December 2001 version of its Arbitration Policy in its Employee Handbook, which is given to all
 13 new employees as part of the new hire package. In addition, the Handbook contains an Employee
 14 Handbook Receipt Acknowledgement, to be signed by the employee, which specifically
 15 acknowledges agreement to the terms of the December 2001 Arbitration Policy. A true and correct
 16 copy of a 24 Hour Fitness Employee Handbook Receipt Acknowledgment is attached hereto as
 17 Exhibit "D".

18 7. Therefore, all employees employed from December of 2001 through the
 19 present are, or should have been, on notice of the existence of the revised policy, and the fact that the
 20 policy is binding upon their employment relationship with 24 Hour Fitness.

21 I declare under the penalty of perjury under the laws of the State of California that the
 22 foregoing is true and correct.

23 Executed on this 4th day of June, 2004, at San Ramon, California

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 25 
 26 WILLIAM D. PRESCOTT
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2.
 DECLARATION OF WM. PRESCOTT IS A 24 HOUR FITNESS' MOTION FOR ORDER AMENDING PLEADING

1 Robert L. Boyce, Jr., et al. v. Sports and Fitness Clubs of America, et al.
 2 U.S. District Court, Southern District of California Case No. 03cv2140 DMS(JMA)

3 **DECLARATION OF SERVICE**

4 I, Tanya Longo, declare:

5 I am, and was at the time of service of the papers herein referred to, over the age of
 6 18 years, and not a party to this action. My business address is 701 B Street, 13th Floor, San Diego,
 7 CA 92101.

8 On June 4, 2004, I served the following document(s):

9 **DECLARATION OF WILLIAM D. PRESCOTT IN SUPPORT OF**
 10 **DEFENDANT'S MOTION FOR ORDER AMENDING PLEADING TO**
 11 **EXCLUDE REFERENCE TO REPRESENTATION OF UNNAMED CLASS**
 12 **MEMBERS WHO ARE PARTIES TO ARBITRATION AGREEMENTS**

13 on the parties in this action addressed as follows:

14 Justian Jusuf, Esq.
 15 Castle, Peterson & Krause LLP
 16 4675 MacArthur Court, Suite 1250
 17 Newport Beach, CA 92660
 18 Telephone: (949) 417-5600
 19 Facsimile: (949) 417-5610

20 Attorney for Plaintiffs
 21 ROBERT L. BOYCE, JR.
 22 and STEPHANIE SHETLER

23 XX BY U.S. MAIL: I placed the original of the above document(s) in a sealed envelope, addressed
 24 as indicated above. I am readily familiar with the firm's practice of collection and processing
 25 correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the
 26 ordinary course of business. I am aware that on motion of party served, service is presumed invalid
 27 if postal cancellation date or postage meter date is more than one day after date of deposit for
 28 mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the
 foregoing is true and correct and that this declaration was executed on June 4, 2004 at San Diego,
 California.


 Tanya Longo

ARBITRATION OF DISPUTES

As an expeditious and economical way to settle employment disputes without the need to go through the courts, 24 Hour Fitness agrees and requires its employees to submit such disputes to final and binding arbitration.

NATURE OF DISPUTE

If any dispute arises from or relates to your employment with 24 Hour Fitness or the termination of your employment, you and 24 Hour Fitness agree that you both will submit it exclusively to final arbitration. Except for workers' compensation and unemployment insurance claims, the dispute includes every kind or type of dispute including, without limitation, any allegation of wrongful discharge, discrimination, harassment, unfair competition, or any injury to a party's physical, mental or economic interest. Unless controlling legal authority requires otherwise, there shall be no right or authority for any dispute to be heard or arbitrated on a class action basis, as a private attorney general, or on a basis involving disputes brought in a purported representative capacity on behalf of the general public, provided, however, that any individual claim is subject to this agreement to arbitrate. This means that a neutral arbitrator, rather than a court or jury, will decide the dispute.

CONTROLLING LAW

We agree to settle the dispute according to the provisions of the Federal Arbitration Act, 9 U.S.C. sections 1 - 16. All disputes will be resolved by a single Arbitrator. The Arbitrator shall be selected by mutual agreement of the parties.

REQUEST FOR ARBITRATION

To start the arbitration process, either party must submit a written arbitration request to the other, within the appropriate statute of limitation period for the claim being brought. The arbitrator may continue in a party's absence if, after due notice, that party fails to appear. Any failure to request arbitration in this time frame and according to the procedures set forth below shall constitute a waiver of all rights to raise any claims in any forum arising out of any dispute that was subject to arbitration.

A Request for Arbitration must be submitted in writing to the other party. The Request for Arbitration shall include the following information:

1. Description of the Dispute: A description of the dispute in sufficient detail to advise the other party of the nature of the dispute. It must include the date when the dispute first arose;

2. **Names of Witnesses:** The names, work locations and telephone numbers of any co-workers or supervisors with knowledge of the dispute; and

3. **Relief Requested:** Tell the other party what is requested.

Either party may have a lawyer or any person represent it in the arbitration proceedings. However, each party must pay for any expenses, including lawyer's fees, associated with hiring his, her or its lawyer or other representative. Subject to any remedies to which a prevailing party may be entitled under the law, neither party is responsible for the other's lawyer's fees or any expenses incurred pursuing arbitration.

Costs of Arbitration

If required by controlling law, 24 Hour Fitness will pay the fee for the arbitration proceeding. Otherwise, each party will equally bear the costs of arbitration.

LOS_ANGLES:164923.1 034070.1190

EXHIBIT K

EXHIBIT K

DONAHOO & ASSOCIATES
ATTORNEYS

440 W. First Street, Suite 101
Tustin, California 92780
Telephone (714) 953-1010
Facsimile (714) 953-1777

April 11, 2011

Via Email and U.S. Mail

John C. Kloosterman, Esq.
LITTLER MENDELSON, P.C.
650 California Street, 20th Floor
San Francisco, California 94108

Re: Beauperthuy, et al. v. 24 Hour Fitness

Dear John:

This letter follows our meet and confer telephone conference of today's date. We spoke regarding the issues set forth in your letter of April 1, 2011 regarding the venue of arbitration claims filed in this matter following the Court's ruling on class certification.

The purpose of my call was to have a meaningful discussion to see if common ground may be found on the issues raised. As I explained, we are interested in meeting and conferring about all of these issues. It was my hope that we can reach agreement on many procedural issues.

Although we did not reach agreement on any issue during our call, you agreed to go back to your client and discuss these issues. You also indicated that your client is in the process of searching its records to determine whether there exists one or more signed arbitration agreement for each of the claimants.

We discussed the fact that for most of the Claimants, their dates of eligible employment are listed in the Demand and Claims. For hundreds of them, their entire qualifying employment precedes the 2005 and 2007 Agreements and is therefore subject to the 2001 Agreement. The 2001 Agreement has no provision regarding "where the dispute arose" or "where the employee worked."

It may make sense for those individuals to use mutually agreeable arbitrator(s) from a JAMS list at least as to those. Such an agreement would make at least several hundred claimants eligible for immediate arbitration. Right now, I can't see the basis for holding up their right to arbitrate on the basis that others were allegedly subject to a different agreement.

If your client could provide the signed arbitration agreements it could speed the process up further.

Exhibit "H"

Case3:06-cv-00715-SC Document433-2 Filed04/25/11 Page16 of 22

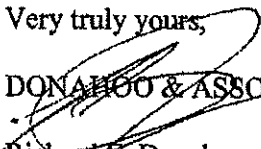
John C. Kloosterman, Esq.

April 11, 2011

Page No. 2

Thank you for taking the call today and I hope we can work out these issues so we can get to the merits on behalf of our respective clients as soon as possible. Please respond as soon as possible with the arbitration agreements. Also, I would like to schedule a follow up call later this week after you have heard from your client. Please let me know your availability.

Very truly yours,


DONAHOO & ASSOCIATES

Richard E. Donahoo

RED/smb

cc: Thomas G. Foley, Jr. (via email) Justin Karczag (via email)

Exhibit "H"

EXHIBIT L

EXHIBIT L

DONAHOO & ASSOCIATES
ATTORNEYS

440 W. First Street, Suite 101
Tustin, California 92780
Telephone (714) 953-1010
Facsimile (714) 953-1777

May 13, 2011

Via U.S. Mail

John C. Kloosterman, Esq.
LITTLER MENDELSON, P.C.
650 California Street, 20th Floor
San Francisco, California 94108

Re: Beauperthuy, et al. v. 24 Hour Fitness
Claimants Began and Ended Work 2001-2004 (See Exhibit A)

Dear John:

This is the first of four letters that will respond to your 913 individual letters recently received. This letter is in response to 167 of these individual letters and responds solely on behalf of those individuals listed in Exhibit A, attached hereto.

From our records, which include documents that 24 Hour produced in these proceedings, each of the individuals listed on Exhibit A **began and ended** their employment in a qualifying position with 24 Hour between 2001 and 2004.¹ If you disagree, please advise and provide documentation that any of the individuals listed on Exhibit A were employed by 24 Hour subsequent to 2004.

Your letter of April 1, 2011 states that the 2001 arbitration agreement was applicable in 2001, but does not provide the specific date when 24 Hour notified employees that a new arbitration agreement had been adopted. Please advise us of the exact date in 2005 when 24 Hour first notified employees that there was purportedly a new arbitration agreement. If the 2005 arbitration agreement was implemented on different dates in different areas of the country or in different districts, or states, please advise us of the dates when the 2005 agreement was implemented in each district or state.

Your letter requests proposed arbitrators be designated by claimants from several geographic locations, apparently based on 24 Hour's records of the club where the claimants identified on Exhibit A last worked.

¹ Note, according to our calculations, you sent letters to 913 of the 983 claimants. Had you sent letters to all of the 983 claimants, at least 177 of them would fall into this category.

John C. Kloosterman, Esq.
May 13, 2011
Page 2

We previously requested in writing on several occasions a copy of any written arbitration agreement signed, or acknowledged, by each of these claimants. Your letter in response did not include any such agreements or acknowledgments executed by any of the claimants. We assume that since these individuals did not work after January 1, 2005, the specific venue provisions do not apply. If you disagree, please advise.

24 Hour submitted a 2004 declaration to the federal court while the *Boyce* case was pending as a national—not just California—FLSA putative collective action that stated that the 2001 Arbitration of Disputes policy applied to all employees; a copy of the declaration and policy is enclosed. This policy states it is subject to the Federal Arbitration Act (“FAA”). Therefore under the 2001 agreement, the FAA’s general venue policies apply. In your letter of May 2, 2011 you agree. Under the FAA, venue is appropriate under the general venue provisions of 28 U.S.C. § 1391(a). *Textile Unlimited v. A. bmhand Co.*, 240 F.3d 781, 784-786 (9th Cir. Cal. 2001), citing, *Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co.*, 529 U.S. 193, (2000).

Here, under §1391(a) venue is appropriate in the Northern District of California as it is where the headquarters of 24 Hour Fitness is located.

With respect to proposed arbitrators for arbitrations in the Northern District, we proposed that the parties agree to an arbitrator for a specific number of individual arbitrations. This would not be a collective arbitration or group arbitration, but simply an agreement to select an initial arbitrator for a specific number of individual arbitrations. We would propose that the parties initially arbitrate 10-20 individual arbitrations, with half of the individuals selected by Claimants’ counsel and half by 24 Hour.

For the first agreed upon number of individual arbitrations, we would propose the following arbitrators for arbitration in the Northern District:

Hon. Demetrios P. Agretelis (Ret.)
Hon. Edward A. Infante (Ret.)
Hon. Edward Panelli (Ret.)
Michael Loeb, Esq.
Hon. Steven Stone (Ret.)
Hon. Daniel Pratt (Ret.)

John C. Kloosterman, Esq.
May 13, 2011
Page 3

Please respond within 14 days. We look forward to meeting and conferring with you in the hopes of proceeding in an orderly manner. We are willing to come to San Francisco to meet face-to-face if necessary to further meet and confer to resolve issues.

Very truly yours,

DONAHOO & ASSOCIATES



Richard E. Donahoo

RED/smb

cc: Thomas G. Foley, Jr. (*via email*), Justin Karczag (*via email*)

No.	Last Name	First Name	MI	Plaintiff ID	Claimant #
1	Aarona	Christian	K	1000	# 451
2	Abeyta	Brian	D	1256	# 901
3	Akana	Michael	K	923	# 452
4	Allen	Robert	L	1314	# 551
5	Anderson	Bryan	Scott	110	# 602
6	Avila	Anthony	R	510	# 102
7	Barnes	H	Hamilton	842	# 352
8	Bean	Laura	L	576	# 857
9	Bean	James	Bryc	194	# 652
10	Benak	Joann	Mari	400	# 353
11	Birely	Matthew	Jerin	39	# 862
12	Blair	Joseph	P	1061	# 655
13	Bluff	James	R	221	# 104
14	Bowden Jr	Lonnie	L	1062	# 708
15	Boyd	Roderick	C	1182	# 303
16	Bozieux	Guerlin		1030	# 864
17	Brockett	Dawn	Katherine	919	# 454
18	Brown	Ryan	Scott	146	# 106
19	Brown	Ryan	Scott	146	# 155
20	Brown	Jason	D	92	# 354
21	Bryant	Terry	L	172	# 608
22	Buntin	Amanda	L	359	# 866
23	Burt	Terri	Leigh	700	# 555
24	Cantlon	Terry	Joseph	954	# 257
25	Clack	Abbott	Sebastian	967	# 411
26	Cloudas	Keith	Todd	714	# 713
27	Coe	Charles	T	352	# 203
28	Collins	Christina	D	1220	# 714
29	Conry	Eric	Lee	744	# 456
30	Cook	Kaytee	Lynn	726	# 305
31	Corson	Hadley	Erinn	1126	# 509
32	Criqui	Chad	Allan	1059	# 661
33	Crittendon	Andre		439	# 357
34	Curtis	Anthony	Troy	731	# 459
35	D'errico	Lindsay		1109	# 946
36	Davidsson	John		329	# 947
37	Demorato	Pizza	Celeste	433	# 874
38	Deslatte-Bordelon	Brandi	Nicole	1058	# 716
39	Deslatte-Bordelon	Brandi	Nicole	1058	# 762
40	Dia Cono	Andrea	S	600	# 416
41	Dillion	Jamie	Lill	446	# 359
42	Dwyer	Miguel	S	968	# 717

43	Eserman	Miranda	Lee	838	# 311
44	Estey	Travis	J	903	# 461
45	Estey-Rodriguez-Hoep	Megan	A	904	# 462
46	Evers	Stephanie	Linn	613	# 667
47	Fannin	Nicholas	Kie	994	# 908
48	Festner	Jared	Michael	193	# 360
49	Fittro	David	Dean	952	# 718
50	Foley	Jessica	L	1060	# 669
51	Fontenot	Kirk	A	1091	# 313
52	Frei	Troy	A.	97	# 911
53	Gabalski	Heidi		527	# 955
54	Gasteiger	Lisa	J	29	# 267
55	Gaughan	Kathleen	Elizabeth	825	# 670
56	Geha	Ramsay	Hust	1011	# 465
57	Gladney	Deborah		1168	# 720
58	Gossett	Tyler	Evan	1302	# 317
59	Green	Quentin	Royce	627	# 424
60	Gregorek	Connie	Barr	1012	# 878
61	Griffin	Malikia	Dunsha	1254	# 516
62	Haeuptle	William	Louis	880	# 466
63	Haines	Jennifer	Ann	516	# 118
64	Hale	Heather	A	989	# 365
65	Hall	Lisa	J	834	# 467
66	Hardee	Jimmy	Dale	350	# 879
67	Harman	Krista		858	# 426
68	Harris	Christopher	Lee	606	# 119
69	Harris	Rochelle	L	862	# 723
70	Hill	Jacob	Donald	770	# 470
71	Hill	Clinton	Mathews	1115	# 520
72	Hollweg	Erika		733	# 319
73	Holm	Corey	A	573	# 371
74	Honell	James	Richard	483	# 373
75	House	Meda	Lakeysha L.	1029	# 915
76	House Bagley	Lesley	Louise	437	# 374
77	Howell	Kelly		131	# 274
78	Hudson	Goreal	D	88	# 959
79	Ince	Sieglinde	Irene	151	# 429
80	Kilpatrick	Kimberly	Colleen	1077	# 472
81	King(McCaherty)	Geoffrey	T	283	# 921
82	Kordish	Steven	Wayne	1037	# 323
83	Kuo	Tony		717	# 678
84	Lane	Monte		391	# 474
85	Langton	Shane	Anthony	1236	# 475

86	Lenius	Julie	Lynn	245	# 681
87	Lentz	Ian	W	973	# 523
88	Lindstrom	Dan	R	96	# 682
89	London	David	Alexander	4	# 683
90	Longwell	Jordan	B	596	# 433
91	Marchica	Emmanuel	Char	555	# 436
92	Masone	Christie	V	1226	# 437
93	Matthews	Marcel	W	503	# 964
94	McCullough	Nicole	M	1237	# 729
95	McDonald	Jason	R	813	# 330
96	Mcgregor	Daniel	A	1090	# 730
97	McMahon	Michael	Frank	178	# 627
98	Medina	Adriana		996	# 438
99	Moore	Kevin	Anthony	1301	# 184
100	Moore	Kevin	Anthony	1301	# 228
101	Morgan	Boon	Do Kim	15	# 926
102	Morrow	Jason	Daniel	580	# 686
103	Myers	Joshua	A	1217	# 332
104	Nesmith	John	D	94	# 966
105	Norris	Taylor	L	925	# 530
106	O'Bryant	Anthony	Alle	1289	# 333
107	Oliver	Christina	Jo	863	# 887
108	Olson	Genesis	M	1015	# 532
109	Orrico	Steven	Bernard	2	# 968
110	Overby	William	C	1144	# 334
111	Overdorff (Craner)	Angela	M	238	# 830
112	Papedo	Louis	Sidney	457	# 141
113	Parise	Michael	S	314	# 380
114	Paulick	Cameron	M	434	# 932
115	Pollak	Glenn	L	425	# 833
116	Powers	Norinne	Margaret	1260	# 480
117	Pulido	Amber	G	455	# 234
118	Quigley	Kristin	Suza	492	# 235
119	Quinn	Sean	Patrick	1241	# 541
120	Quist (Huerta)	Julia	M	1267	# 481
121	Randolph	Stephen	E	62	# 191
122	Reese	Wesley	A	1027	# 440
123	Rehman (Sherman)	Alison	C	974	# 735
124	Reimers	Casie	Jean	1124	# 542
125	Ricci	Tiffany	A	1153	# 336
126	Roed	Indika	Skye	1212	# 441
127	Rose	Scott	Kristoffer	514	# 894
128	Ross	Keith	D	885	# 737

129	Ross	Keith	D	885	# 792
130	Roulet	Peter	Michael	972	# 442
131	Routh	Kristina		168	# 384
132	Rue	Eddie	Carlos	1051	# 543
133	Runnels	Jennifer	Lynn	310	# 385
134	Samayoa	Helen	P	467	# 286
135	Samek(Taylor)	Paula	Michelle	809	# 590
136	Schmukal	Mark		1189	# 443
137	Sensiba	Trenton	Tyler	821	# 386
138	Shafer	Kent		484	# 290
139	Shanahan	Sarah	Louise	525	# 387
140	Shaw	Heather	B	693	# 388
141	Sherrill	Adam	Wayne	344	# 975
142	Sherwin	Mark	A	1197	# 594
143	Shine	Erin	C	232	# 389
144	Shocklee Jr	John	David	645	# 444
145	Siegmund	Robert	Jason	223	# 446
146	Slatten	Sean	Patrick	276	# 938
147	Smith	Christopher	Thom	669	# 739
148	Smith	Paul	H	1171	# 491
149	Spencer	Nathan	Josh	1303	# 741
150	Stark	Duane	A	1259	# 447
151	Stauffer (Tucker)	Suzanne	P	764	# 448
152	Struble	Kimberly	Shea	38	# 977
153	Thompson	Robert	W	682	# 393
154	Troell	Kimberly	R	175	# 394
155	Valera	Thomas	James M	601	# 547
156	Van Horn	Marybeth		1028	# 746
157	Vasquez (Geiger)	Frances		739	# 495
158	Vaughn	Tracey	Jean	891	# 699
159	Vincent	Christopher	L	392	# 980
160	Wagner	Katherine	Denise	502	# 396
161	Warthen	Jodi		964	# 548
162	Washington	Anwar	Bilal	1347	# 747
163	Welter	Jennifer	Carrie	811	# 399
164	Wilkins	Robert	Tadahiko	1207	# 498
165	Wilson	Bradford	W	273	# 400
166	Yentes	Jennifer	M	720	# 800
167	Yong	Edward	W	1186	# 500

No.	Last Name	First Name	MI	Plaintiff ID	Claimant #
1	Aarona	Christian	K	1000	# 451
2	Abeyta	Brian	D	1256	# 901
3	Akana	Michael	K	923	# 452
4	Allen	Robert	L	1314	# 551
5	Anderson	Bryan	Scott	110	# 602
6	Avila	Anthony	R	510	# 102
7	Barnes	H	Hamilton	842	# 352
8	Bean	Laura	L	576	# 857
9	Bean	James	Bryc	194	# 652
10	Benak	Joann	Mari	400	# 353
11	Birely	Matthew	Jerin	39	# 862
12	Blair	Joseph	P	1061	# 655
13	Bluff	James	R	221	# 104
14	Bowden Jr	Lonnie	L	1062	# 708
15	Boyd	Roderick	C	1182	# 303
16	Bozieux	Guerlin		1030	# 864
17	Brockett	Dawn	Katherine	919	# 454
18	Brown	Ryan	Scott	146	# 106
19	Brown	Ryan	Scott	146	# 155
20	Brown	Jason	D	92	# 354
21	Bryant	Terry	L	172	# 608
22	Buntin	Amanda	L	359	# 866
23	Burt	Terri	Leigh	700	# 555
24	Cantlon	Terry	Joseph	954	# 257
25	Clack	Abbott	Sebastian	967	# 411
26	Cloudas	Keith	Todd	714	# 713
27	Coe	Charles	T	352	# 203
28	Collins	Christina	D	1220	# 714
29	Conry	Eric	Lee	744	# 456
30	Cook	Kaytee	Lynn	726	# 305
31	Corson	Hadley	Erinn	1126	# 509
32	Criqui	Chad	Allan	1059	# 661
33	Crittendon	Andre		439	# 357
34	Curtis	Anthony	Troy	731	# 459
35	D'errico	Lindsay		1109	# 946
36	Davidsson	John		329	# 947
37	Demorato	Pizza	Celeste	433	# 874
38	Deslatte-Bordelon	Brandi	Nicole	1058	# 716
39	Deslatte-Bordelon	Brandi	Nicole	1058	# 762
40	Dia Cono	Andrea	S	600	# 416
41	Dillion	Jamie	Lill	446	# 359
42	Dwyer	Miguel	S	968	# 717

43	Eserman	Miranda	Lee	838	# 311
44	Estey	Travis	J	903	# 461
45	Estey-Rodriquez-Hoep	Megan	A	904	# 462
46	Evers	Stephanie	Linn	613	# 667
47	Fannin	Nicholas	Kie	994	# 908
48	Festner	Jared	Michael	193	# 360
49	Fittro	David	Dean	952	# 718
50	Foley	Jessica	L	1060	# 669
51	Fontenot	Kirk	A	1091	# 313
52	Frei	Troy	A.	97	# 911
53	Gabalski	Heidi		527	# 955
54	Gasteiger	Lisa	J	29	# 267
55	Gaughan	Kathleen	Elizabeth	825	# 670
56	Geba	Ramsay	Hust	1011	# 465
57	Gladney	Deborah		1168	# 720
58	Gossett	Tyler	Evan	1302	# 317
59	Green	Quentin	Royce	627	# 424
60	Gregorek	Connie	Barr	1012	# 878
61	Griffin	Malikia	Dunsha	1254	# 516
62	Hacuptle	William	Louis	880	# 466
63	Haines	Jennifer	Ann	516	# 118
64	Hale	Heather	A	989	# 365
65	Hall	Lisa	J	834	# 467
66	Hardee	Jimmy	Dale	350	# 879
67	Harman	Krista		858	# 426
68	Harris	Christopher	Lee	606	# 119
69	Harris	Rochelle	L	862	# 723
70	Hill	Jacob	Donald	770	# 470
71	Hill	Clinton	Mathews	1115	# 520
72	Hollweg	Erika		733	# 319
73	Holm	Corey	A	573	# 371
74	Honell	James	Richard	483	# 373
75	House	Meda	Lakeysa L.	1029	# 915
76	House Bagley	Lesley	Louise	437	# 374
77	Howell	Kelly		131	# 274
78	Hudson	Goreal	D	88	# 959
79	Ince	Sieglinde	Irene	151	# 429
80	Kilpatrick	Kimberly	Colleen	1077	# 472
81	King(McCaherty)	Geoffrey	T	283	# 921
82	Kordish	Steven	Wayne	1037	# 323
83	Kuo	Tony		717	# 678
84	Lane	Monte		391	# 474
85	Langton	Shane	Anthony	1236	# 475

86	Lenius	Julie	Lynn	245	# 681
87	Lentz	Ian	W	973	# 523
88	Lindstrom	Dan	R	96	# 682
89	London	David	Alexander	4	# 683
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134	Samayoa	Helen	P	467	# 286
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136	Schmukal	Mark		1189	# 443
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149	Spencer	Nathan	Josh	1303	# 741
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155	Valera	Thomas	James M	601	# 547
156	Van Horn	Marybeth		1028	# 746
157	Vasquez (Geiger)	Frances		739	# 495
158	Vaughn	Tracey	Jean	891	# 699
159	Vincent	Christopher	L	392	# 980
160	Wagner	Katherine	Denise	502	# 396
161	Warthen	Jodi		964	# 548
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163	Welter	Jennifer	Carrie	811	# 399
164	Wilkins	Robert	Tadahiko	1207	# 498
165	Wilson	Bradford	W	273	# 400
166	Yentes	Jennifer	M	720	# 800
167	Yong	Edward	W	1186	# 500

EXHIBIT M

EXHIBIT M

DONAHOO & ASSOCIATES
ATTORNEYS

440 W. First Street, Suite 101
Tustin, California 92780
Telephone (714) 953-1010
Facsimile (714) 953-1777

May 13, 2011

Via U.S. Mail

John C. Kloosterman, Esq.
LITTLER MENDELSON, P.C.
650 California Street, 20th Floor
San Francisco, California 94108

Re: **Beauperthuy, et al. v. 24 Hour Fitness**

Dear John:

Please allow this letter to respond to your letter of May 2, 2011 in which you demand Plaintiffs withdraw the pending motion to compel arbitration and threaten to proceed against me for sanctions under FRCP Rule 11, et al. Your letter responded to my letter sent April 12, 2011.¹

In your letter you claim Judge Conti does not have jurisdiction to hear Plaintiffs' motion to compel arbitration. However, you do not cite any authority for your position. As you know, the Court set a Case Management Conference for June 24, 2011, the date the motion was calendared, so we assume the Court maintains jurisdiction over the parties in this matter. It is difficult to meet and confer on this legal issue when you do not cite any authority upon which you base your jurisdiction argument. In addition, you state that the motion, and specifically my declaration, contains "numerous factual inaccuracies and incorrect statements" however none are specified in your letter. I cannot meaningfully respond to vague accusations.

The motion to compel is necessary as it appears 24 Hour continues tactics to avoid arbitration in the appropriate forum as it did for years at the earlier stages of this seven-year litigation. The motion is necessary because 24 Hour as not provided copies of the signed arbitration agreements you contend bind each of these individuals with specific forum clauses. We have previously requested each agreement that was signed or acknowledged by each of the 983 claimants in a manner that would demonstrate their assent to the terms of it.

¹ You are correct correspondence was drafted and sent April 12, 2011 but misdated as April 11, 2011.

John C. Kloosterman, Esq.

May 13, 2011

Page 2

We agree that arbitration is a creature of contract and that the Federal Arbitration Act ("FAA") will govern the analysis of 24 Hour arbitration agreements. We expect that if 24 Hour intends to seek to enforce specific venue restrictions it will present to the arbitrator a signed written agreement or acknowledgement evidencing mutual assent to its terms. 9 U.S.C. §§ 1-2; *Circuit City Stores, Inc. v. Saint Clair Adams*, 532 U.S. 105, 121 S. Ct. 1302, 149 L. Ed. 2d 234 (2001). On a motion to compel, by its terms, 9 U.S.C. § 3 "leaves no place for the exercise of discretion by a district court, but instead mandates that district courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218, 105 S. Ct. 1238 (1985). "The court's role under the Act is therefore limited to determining (1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue." *Chiron Corp. v. Ortho Diagnostic Sys.*, 207 F.3d 1126, 1130 (9th Cir. 2000). We do not have copies of the signed agreements because they were not provided to the employees but were maintained by 24 Hour. While combing through the 300,000 pages of documents produced, as well as the mass of incomplete employee files, we can dig up an acknowledgement here or there, but we do not have a data set that would provide us access to such documents for all of the claimants. Therefore, the motion is and was necessary because 24 Hour did not produce the arbitration agreements or acknowledgments in response to our discovery requests and 24 Hour is still refusing to produce them.

In your May 2nd letter, and in your recent hundreds of letters addressed to our individual clients, you presume that the specific forum clauses found in post-2004 arbitration policies bind the claimants to arbitrate in the area of the last club at which they worked for claims that arose during the effective dates of the prior arbitration agreement in 2001-2004 which does not contain specific forum clauses. Please provide legal authority upon which 24 Hour is relying to support the position that the last version of the arbitration policy controls all claims, including those that arose during a prior arbitration policy.

In our meet and confer email exchange on April 12th, you stated that your client has individual arbitration agreements for many of the 983 claimants and that they were being gathered for production. But 24 Hour has not provided them. I requested the signed arbitration agreements for each of the claimants in my email of March 25, 2011 and in our telephone conversation on April 12, 2011 and in my letter sent the same day, April 12th.

In my April 12th letter I also requested your availability for an additional meet-and-confer conference call that same week, prior to April 15, 2011 to discuss progress towards obtaining these signed arbitration agreements and resolving disputes, including venue. You did not return my request in my April 12th letter for a further telephone conference.

More than a month after my March 23, 2011 request, and after two weeks without receiving any communication, or any of the signed agreements, we filed the motion.

John C. Kloosterman, Esq.

May 13, 2011

Page 3

Now, seven weeks have elapsed, and we still have not received signed arbitration agreements or notices of acknowledgment of the employee handbook or an update containing an arbitration clause.

If 24 Hour would produce the arbitration agreements, or signed acknowledgments of receipt of an employee handbook containing an arbitration provision for each of the 983 claimants that would bind those claimants to those agreements, the parties could move to resolve most, if not all, the issues without the need of the Court ruling on the pending motion.

John, please answer once and for all this simple question—for which, if any, of our claimants does 24 Hour have a signed arbitration agreement, or a signed acknowledgment of receipt of an employee handbook which contained an arbitration agreement. If you cannot, or will not, respond to this basic question, we must assume that 24 Hour did not obtain arbitration agreements with all claimants.

You have previously represented to me and my co-counsel that 24 Hour does not have arbitration agreements for all of the opt-in Plaintiffs. Once we are provided with the signed arbitration agreements for those individuals who agreed to the agreements, we can do as you suggest, analyze each agreement on behalf of each claimant. However, based upon 24 Hour's prior 2004 declaration of William Prescott and the attached 2001 agreement with the general FAA venue provisions, and your representation that you do not have written arbitration agreements for each of the individuals, we filed claims/demands for arbitration with an arbitration service in the Northern District of California, which is an appropriate venue under 28 U.S.C. § 1391(a) because it is the location where 24 Hour's headquarters is located.

In your April 1 and May 1 letters, and in the hundreds of individual letters requesting proposed arbitrators, it is 24 Hour who is attempting to rewrite the alleged agreements of the parties. For example, you acknowledged in your May 2 letter that the 2001 agreement does not include a specific venue clause and therefore "[t]he 2001 agreement is covered by the general venue provisions of the Federal Arbitration Act." Yet your individual letters ignore the venue choice of these claimants who have sought arbitration in the Northern District, and instead requests arbitrators in other geographic areas for these individuals. This is an attempt to rewrite the 2001 arbitration agreement by including a venue restriction which was not included in the 2001 agreement.

By our calculations, 431 of the 983 claimants ended their employment with 24 Hour prior to 2005. Of those, 357 ended their employment between January 1, 2001 and December 31, 2004. Of those 177 began and ended their employment between 2001 and 2004.

Therefore, as you acknowledge, any later arbitration agreements enacted in 2005 or 2007, would be inapplicable to those claimants who never worked for 24 Hour post December 31, 2004, or prior to the implementation of the 2005 arbitration provision.

John C. Kloosterman, Esq.

May 13, 2011

Page 4

Thus, even under your presumptions that a written agreement exists and that the last agreement during the employment period controls, hundreds of the individual claimants only worked at 24 Hour when the 2001 Agreement was in effect and are subject only to the FAA's general venue rules. As to those claimants or those without a written arbitration agreement that contains a specific more restrictive venue provision, there should be no dispute that venue in the Northern District is appropriate.

The FAA's venue provisions are discretionary, not mandatory. *Textile Unlimited v. A..bmhand Co.*, 240 F.3d 781, 784-786 (9th Cir. Cal. 2001), citing, *Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co.*, 529 U.S. 193, (2000). "The venue provisions of the FAA do not supplant the general venue provisions of 28 U.S.C. § 1391(a); rather, they are permissive and supplement those sections. *Id.*"

The FAA, specifically 9 U.S.C. § 4, provides, *inter alia*, that a party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28 . . . for an order directing that such arbitration proceed in the manner provided for in such agreement.

As explained in *Textile Unlimited*, "§ 4 provides that venue is proper for an action to compel arbitration in "any United States district court which, save for such agreement, would have jurisdiction under Title 28." That clear expression should end the argument. "It does not require that the petition be filed where the contract specified that arbitration should occur." *Textile Unlimited, supra* at 785, citing *Continental Grain Co. v. Dant & Russell*, 118 F.2d 967, 969 (9th Cir. 1941).

Venue is proper under 28 U.S.C. § 1391, as 24 Hour is headquartered in the Northern District of California, and was subject to in personam jurisdiction in California in the *Beauperthuy* matter.

We do not seek to have Judge Conti rewrite any agreement or decide that arbitrations must proceed in specific groups. We merely seek to compel arbitration to occur according to the FAA in the Northern District of California as per the plain text of the FAA's venue provisions and controlling 9th Circuit authority applying it. The reference to four specific groups of claimants in our motion was in fact, solely to streamline an understanding as to the groups that, according to 24 Hour, may be segregated by the applicable arbitration agreement.²

² As to those 2005 and 2007 agreements, you do not address the language that the arbitrator shall be selected from *either* where the dispute arose or where the employee last worked. To give meaning to the *disjunctive* provision of the contract, then there must be an alternative place where the arbitrators could be selected from, and employees are not automatically required to arbitrate all disputes where they last worked. Instead, interpretation is required to evaluate whether the agreement means that all arbitrations may only proceed where the employee last worked. Judge Conti has previously recognized that interpretation of a

John C. Kloosterman, Esq.

May 13, 2011

Page 5

At least for the 357 individuals employed whose employment ended between 2001 and 2004, and for those claimants where there is no evidence of a written arbitration agreement or acknowledgment of receipt of an employee handbook, there should be no dispute that venue in the Northern District is appropriate and claimants' motion should be granted.

Once 24 Hour has produced signed agreements or an acknowledgement that evidences their agreed to be bound for those former employees who worked while the 2005 or 2007 arbitration agreements were purportedly in effect we can further meet-and-confer on where those claimants' individual arbitrations will go forward and stipulate to suspend the motion to compel as to those claimants. To the extent that 24 Hour cannot produce such evidence, it is our position that these claimants are entitled to arbitrate pursuant to the general venue provisions of the FAA. If you have authority which refutes that position, please provide it to us as part of the meet-and-confer process.

As to your accusations of bad faith, your letter contains numerous factual inaccuracies and misstatements. In our April 12 telephone call you did not inform me of the specific date when you would be starting a trial in another matter. Further, you did not tell me dates when you would be out of the country in June. I first learned of your international diplomatic assignment and your vacation in your motion to continue the hearing date. You did state that 24 Hour was gathering the specific arbitration agreements for each claimant. But none were produced.

The bottom line is claimants filed demands for arbitration in the Federal District Court where 24 Hour Fitness's headquarters is located and where, for at least hundreds of claimants, venue is appropriate under the FAA's general venue provisions. This venue is also appropriate for potentially hundreds of others for which there is no written agreement to arbitrate and possibly more for which there is no evidence they agreed to be bound by a revision to the agreements. Once again, if you will produce the signed arbitration agreements for all of the claimants or appropriate evidence of agreement, we will analyze them and will meet and confer further with you in the hopes of resolving all issues and avoiding the need for burdening the Court over these issues.

Rather than providing a copy of the arbitration agreement for each claimant, you have sent a letter to 913 of the 983 claimants, in care of my office, requesting the names of arbitrators in their geographic area. This includes to hundreds of individuals employed between 2001 and 2004 where you admit the agreement which does not include a specific

provision of the agreement is properly before the Arbitrator not the Court. Thus Judge Conti may simply apply the plain text of the FAA's venue provisions for now, and allow the Arbitrator to sort out the meaning of the agreement and determine if another venue is appropriate for certain claimants.

John C. Kloosterman, Esq.

May 13, 2011

Page 6

venue provision.³ For this group we provide a list of arbitrators for the Northern District of California under separate cover which we will agree to begin an agreed-upon number of the arbitrations in an orderly manner.

Rather than threatened sanctions, please cooperate to get these arbitrations moving, at least as to those where the general venue provisions of the FAA apply.

If 24 Hour Fitness will produce the signed arbitration agreements or acknowledgments, we commit to respond within 14 days as to your request for arbitrators in specific venues.

We are available to speak to you further regarding the foregoing.

Very truly yours,

DONAHOO & ASSOCIATES

Richard E. Donahoo

RED/ms

cc: Thomas G. Foley, Jr. (via email), Justin Karczag (via email)

³ 24 Hour Fitness has not sent a letter requesting proposed arbitrators to all 983 claimants. 24 Hour Fitness sent 913 letters but has not sent a letter to 70 of the 983 claimants.

EXHIBIT N

EXHIBIT N

Subject: RE: Beauperthuy
Date: Friday, December 9, 2011 2:52:11 PM PT
From: Kloosterman, John C.
To: Richard Donahoo
CC: Tom Foley, Justin Karczag, Hayward, Laura E.

Rich,

You can file all the petitions you would like; we have also been filing petitions since Monday 12/5 and will continue filing petitions in the proper districts around the country. You can file whatever motions you believe are appropriate in those forums. Ample precedent supports our position. You guys wanted a war - so be it.

I note that a large number of your filings are for individuals not covered by the 2001 agreement. I'll send you a separate letter on those.

I will agree to accept service on 24 Hour's behalf if you'll agree to accept service on behalf of all of your clients.

John

-----Original Message-----

From: Richard Donahoo [<mailto:rdonahoo@donahoo.com>]
Sent: Friday, December 09, 2011 2:40 PM
To: Kloosterman, John C.
Cc: Tom Foley; Justin Karczag
Subject: Beauperthuy

John

I am informed that today Justin's office received approximately 20 petitions to compel arbitration filed this week between 12/6 to 12/8 including for those covered by the 2001 agreement.

As you are likely aware, on Monday 12/5/11 we filed 273 separate petitions to compel arbitration in the Northern District covering all those remaining claimants covered under the 2001 agreement. In light of our filings in the ND 12/5 and Judge Conti's ruling 12/2, please do not file further petitions re those covered by the 2001 agreement as there are proceedings already commenced in federal court in the ND re arbitration of those claims.

We are awaiting receipt of conformed copies for all 273 filings and expect to receive them and serve them next week.

Please advise whether you will accept service on behalf of 24 Hour.

Richard Donahoo

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EXHIBIT O

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DONAHOO & ASSOCIATES
ATTORNEYS

440 W. First Street, Suite 101
Tustin, California 92780
Telephone (714) 953-1010
Facsimile (714) 953-1777

December 10, 2011

Via Email and U.S. Mail

John C. Kloosterman
Laura Hayward
LITTLER MENDELSON, P.C.
650 California Street, 20th Floor
San Francisco, California 94108

Re: Beauperthuy, et al. v. 24 Hour Fitness

Dear John and Laura:

I am writing to meet and confer with you regarding the status of the petitions to compel arbitration for individuals who last worked for 24 Hours while the 2001 arbitration agreement was in effect. The reason that we want to meet and confer is to minimize the unnecessary workload on Federal District Courts throughout the United States. Please share this letter with all your associates who are filing such petitions.

In reviewing petitions your firm has filed apparently beginning on December 7, 2011 with various Federal District Courts throughout the country, it appears that 24 Hour is moving to compel arbitrations against the same individuals for whom we had already filed petitions to compel arbitration in the Northern District of California on December 5, 2011. So there is no confusion and so you are on notice of the names of the 273 individuals for whom we filed petitions with the Northern District of California to compel arbitration on Monday, December 5, 2011, attached is a list of those individuals.

To be clear, although the Court Clerk for the Northern District of California is continuing to process the 273 petitions to upload them onto the Pacer system, each one of these 273 cases was manually filed in the Northern District on December 5, 2011. If you check the PACER docket for each case you will be able to confirm that each of these cases were filed on December 5, 2011. For those that have been conformed and returned by the Court Clerk, Justin Karczag's office has or will email to you the PACER filings from the Court Clerk to confirm this, if for any reason you question my representation, that all 273 petitions were manually filed on December 5, 2011.

The Clerk's Office for the Northern District accepted all 273 individuals for filing on Monday, December 5, 2011. However, the Clerk's Office could not process the 273 individual petitions for uploading to the Pacer System on Monday, December 5, 2011. The Clerk's Office for the Northern District confirmed that the original of the 273

John C. Kloosterman, Esq.
December 10, 2011
Page No. 2

petitions were manually filed on Monday, December 5th, but that it would take several additional days to upload the petitions on Pacer. As of Friday, December 9, 2011, approximately 150 petitions had been uploaded to Pacer. You will note that on the petitions which were uploaded on PACER on Friday, December 9, 2011, the Clerk's Office has noted that the petitions were filed on Monday, December 5, 2011.

Judge Samuel Conti entered an Order on Friday, 2, 2011, that 16 individuals who last worked for 24 Hours while the 2001 arbitration agreement was in effect would proceed with individual arbitrations in the Northern District of California based on the fact that the 2001 arbitration agreement did not have a venue clause, and the headquarters of 24 Hours is located within the Northern District of California.

Given the above, we again request that you refrain from continuing your filing of petitions to compel arbitrations in different Federal District Courts around the country related to the same 273 people for whom we have already filed petitions on December 5, 2011.

You are knowingly filing competing petitions for these same individuals in different districts on dates subsequent to December 5, 2011. By doing so, you are going to cause additional work for courts when petitions have already been filed with the Federal District Court for the Northern District of California.

We request to meet and confer with you immediately either Monday evening or Tuesday to attempt to resolve the issues raised in this letter. We are also willing to work through these issues with Mark Rudy, who you suggested as a neutral to deal with arbitrator issues.

We also ask that you stipulate to have all of the Northern District cases related to Judge Conti who is the low numbered motion to compel on this issue related to the 2001 agreement. Please advise by 5:00 Monday if you will so stipulate. Otherwise we will file an administrative motion to relate the cases.

Despite the prior lack of success in our meet and confer efforts we remain willing to work through these issues in a professional manner.

Very truly yours,

DONAHOO & ASSOCIATES

Richard E. Donahoe

RED/rd

Enclosure

cc: Thomas G. Foley, Jr.
Justin Karczag

BEAUPERTHUY et al. v. 24 Hour Fitness et al.

Petitions to Compel Arbitration Filed in Northern District of California

FILED DECEMBER 5, 2011

FIRST NAME	LAST NAME
Christian	Aarona
Jared	Adams
Erlin	Addesso
Michael	Aimoto
Michael	Akana
Robert	Allen
Bryan	Anderson
Kenneth	Arterberry
Allison	Ash (Romano)
James	Austin
Dave	Avery
Anthony	Avila
Evan	Ayres
Kim	Bao
H	Barnes
James	Bean
Laura	Bean
Linda	Bell
Neil	Bell
Joann	Benak
Oskar	Bercedoni
Jonathan	Bergerson
Troy	Birdsell
Joseph	Blair
Matthew	Bliss
Nicholas	Bliss
James	Bluff
Dustin	Bonnenfant
Roderick	Boyd
Guerlin	Bozieux
Robert	Bradford
Edwige	Brand
Adam	Bratten
Dawn	Brockett
Jason	Brown
Ryan	Brown
Terry	Bryant
Matt	Bubel
Amanda	Buntin
David	Burrows
Terri	Burt

Aaron	Butler
Trisha	Byerley
	Camarillo-Morris
Veronica	(Do
Terry	Cantlon
Jerry	Caston
Alwin	Chapuseaux
Holly	Childers
Davey	Childres
Emily	Chirdon (Howell)
Mark	Christian
Abbott	Clack
Keith	Cloudas
Charles	Coe
Alekzandra	Collins
Christina	Collins
Stacey	Comstock
Eric	Conry
Kaytee	Cook
Derek	Cooper
Hadley	Corson
Chad	Criqui
Andre	Crittendon
William	Cunningham
Anthony	Curtis
Todd	Dail
Tifni	Davey
Bradley	Davis
Timothy	Day
Dion	De Bit III
Robert	Decker
Pizza	Demorato
Andrea	Dia Cono
Jamie	Dillion
Erin	Donnelly
Mark	Donnelly
Ron	Duran
Miguel	Dwyer
Robert	Dyer
Kevin	Edwards
Miranda	Eserman
Travis	Estey
	Estey-Rodriquez-
Megan	Hoep
Stephanie	Evers
Nicholas	Fannin
Jared	Festner
Antoinette	Fiedler
David	Fittro
Rodney	Fleming
Jessica	Foley

Kirk	Fontenot
Denise	Ford
Troy	Frei
Andrea	Gantz
Lisa	Gasteiger
Kathleen	Gaughan
Ramsay	Geha
Cory	Gilday
Deborah	Gladney
Joel	Gonzalez
Shelly	Gorden
Tyler	Gossett
Quentin	Green
Malikia	Griffin
Melissa	Griffin
Jessica	Grindrod
Roger	Guerra Jr
William	Haeuptle
Jennifer	Haines
Heather	Hale
Lisa	Hall
Angie	Hardy
Krista	Harman
Christopher	Harris
Rochelle	Harris
Robin	Hazim
Shane	Hedani
Christopher	Henderson
Jason	Henderson
Clinton	Hill
Jacob	Hill
Kelly	Hillenbrand (Green)
Erika	Hollweg
Corey	Holm
James	Honell
Lesley	House Bagley
Kelly	Howell
Goreal	Hudson
Sieglinde	Ince
Eric	John
Cindy	Jones
Kimberly	Kilpatrick
James	King
Stanley	Knapton
Steven	Kordish
Tony	Kuo
Star	Lalario
Monte	Lane
Shane	Langton
Lyle	Latimer

Julie	Lenius
Ian	Lentz
Raymond	Leslie
Dan	Lindstrom
Ryan	Littleton
David	London
Jordan	Longwell
Don	Lyttleton
Elizabeth	Mackay (Parson)
Emmanuel	Marchica
Randy	Marsh
Michelle	Marshall
Kristopher	Martino
Christie	Masone
Cortland	Mater
Nicole	McCullough
Jason	McDonald
Daniel	Mogregor
Richard	McMillan
Adriana	Medina
Frank	Millsap
Candice	Mitzel
Kevin	Moore
Patrick	Moore
Boon	Morgan
Travis	Morris
Jason	Morrow
Joshua	Myers
Ross	Navarrette
John	Nesmith
Taylor	Norris
Anthony	O'Bryant
Megan	Olsen
Genesis	Olson
William	Overby
Angela	Overdorff (Craner)
Elicia	Ozar
William	Paccione
Scott	Pagliaccio
Louis	Papedo
Michael	Parise
Jarrett	Patton
Timothy	Paudler
Cameron	Paulick
James	Payne
John	Perry
Michael	Petrovic
Matthew	Popelka
Norinne	Powers
Amber	Pulido

Kristin	Quigley
Sean	Quinn
Julia	Quist (Huerta)
Nichole	Rae
Javier	Ramirez
Stephen	Randolph
Wesley	Reese
Alison	Rehman (Sherman)
Casie	Reimers
Tiffany	Ricci
Shane	Rice
John	Rivera III
Matthew	Robb
Cecil	Roby
Patrick	Rodifer
Indika	Roed
Scott	Rose
Peter	Roulet
Dakota	Routh
Kristina	Routh
Eddie	Rue
Jennifer	Runnels
Matthew	Russell
William	Salminen
Helen	Samayoa
Paula	Samek(Taylor)
Gina	Santurro
Lindsay	Schieffelin
Mark	Schmukal
Arthur	Schwerzel
Trenton	Sensiba
Terry	Shackelford
Kent	Shafer
Sarah	Shanahan
Heather	Shaw
Joeleen	Sheridan (Palmeri)
Mark	Sherwin
Erin	Shine
John	Shocklee Jr
Shannon	Sidwell
Keith	Siebler
Robert	Siegmund
Sean	Slatten
Christopher	Smith
Don	Smith
Lance	Smith
Paul	Smith
Nathan	Spencer
Jerri	Starbuck
Duane	Stark

Suzanne	Stauffer (Tucker)
Monica	Steele
Robert	Suren
Wendell	Sylvester
Natalie	Talamoa
Emile	Tambicannou
Kelly	Tan
Robert	Thompson
Jeremy	Timm
Kimberly	Troell
Thomas	Valera
Marybeth	Van Horn
Frances	Vasquez (Geiger)
Tracey	Vaughn
Bernadette	Vecchiarelli
Filiberto	Vera Jr
Francis	Verasammy
Nicole	Vicha
Christopher	Vogt
Katherine	Wagner
Jodi	Warthen
Jason	Washbourne
Anwar	Washington
Mele	Watts
Nichole	Weems
Jennifer	Welter
Chris	Welton
Megan	West
Robert	Wilkins
Walter	Williams
Bradford	Wilson
Jennifer	Yentes
Edward	Yong